



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

DAVID C. HOLLISTER
DIRECTOR

Analysis of Enrolled House Bill 5026

Topic: Regulation of vehicle protection product warranties.
Sponsor: Representative Emmons.
Co-Sponsors: Representatives Hune, Mortimer, Hildenbrand, Farrah, Leland, Marleau, Stahl, and Gaffney.
Committee: House Insurance
House Banking & Financial Institutions

Date Introduced: June 29, 2005

Date Enrolled: December 1, 2005

Date of Analysis: December 1, 2005

Position: The Department of Labor and Economic Growth supports the bill.

Problem/Background: “Vehicle protection products” are devices installed on a vehicle to prevent theft or damage. These products include alarms, steering locks, pedal locks, kill switches, tracking devices, window etch products, etc... Typically, these products come with warranties for the purpose of reimbursing the warranty holder for certain specified expenses in the event that the product fails to perform as provided in the warranty. These reimbursements can range from actual damage or replacement cost to the vehicle to any costs associated with an incident the vehicle protection product failed to prevent.

Currently, the Office of Financial and Insurance Services does not treat vehicle protection products as insurance items under the Insurance Code of 1956. Other states already have enacted legislation pertaining to the regulation of vehicle protection product warranties. Those states include Arizona, California, Colorado, Georgia, Hawaii, Illinois, Ohio, Texas, and Wisconsin.

Description of Bill: House Bill 5026 establishes a new act to regulate warranties on motor vehicle protection products.

The bill requires compliance with the act for any person to sell warranted vehicle protection products and exempts any seller or administrator of warranted vehicle protection products from the requirements of the insurance code of 1956. To act as a warrantor of vehicle protection products, a person must be registered as one with the Department of Labor and Economic Growth by submitting annual registration records that must include, among other things, the following:

- A copy of the warranty reimbursement insurance policy.
- A copy of each warranty the warrantor is to use in the State of Michigan.

The Department may assess a registration fee of up to \$250.00 per year.

This bill does not require a third party seller of a warranted vehicle protection product to register as a warrantor with the Department.

The bill requires every warranty of a vehicle protection product to have a reimbursement insurance policy that is filed with the Department and indicates that the insurer will reimburse the warranty holder if the warrantor fails to do so. The reimbursement insurance policy must also provide:

- That the holder may file for reimbursement with the insurer if the warrantor fails to pay within 60 days after the holder files proof of loss.
- That the premium for the policy is considered paid if the warranty holder paid for the warranted product and the insurer's liability under the policy is not reduced or relieved by a failure of the warrantor to report the issuance of a warranty to the insurer.
- Proper cancellation terms as provided for in the bill.

The bill sets forth the following requirements that the warranty must meet for the sale of a warranted vehicle protection products:

- Is written in clear, understandable language.
- States that the obligations of warrantor to the holder are guaranteed under the reimbursement insurance policy.
- States that the holder may file for reimbursement with the insurer if the warrantor fails to pay within 60 days after the holder files proof of loss.
- States the name and address of the issuer of the policy and identifies the warrantor, seller, and warranty holder.
- Contains purchase price of the warranty.
- Describes the procedure for making a claim, including a telephone number.
- States the existence of any deductible and indicates the payments or performance provided under the warranty.
- Describes the conditions under which substitution of parties or performances is allowed and sets forth all the obligations and duties of the warranty holder.
- Sets forth terms for any right to transfer the warranty.
- Contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance."

Only in the following circumstances may the warrantor cancel the warranty:

- If the holder fails to pay.
- If the holder makes a material misrepresentation.
- If the holder commits fraud.

- If the holder substantially breaches the holder's duties under the warranty.

Warrantors are prohibited from the following conduct:

- Using words such as "insurance," "casualty," "surety," and "mutual" in its names, contracts, or literature.
- Making false or misleading statements.
- Omitting material statements.
- Requiring, as a condition of sale or financing, that a retail purchaser buy a protection product that is not installed on the vehicle at the time of sale.

The bill sets forth requirements for the warrantor pertaining to the maintenance of records including the holding of accurate accounts, books, and records concerning transactions regulated under the act this bill is creating. The department may also adopt administrative rules in the implementation and administration of the act this bill creates.

The sponsor agreed to department amendments stripping the enforcement powers proposed in Section 19 of the original bill and substituting in its place language giving the Attorney General enforcement authority based on specified sections of the Consumer Protection Act. These powers include seeking an injunction, accepting an assurance of discontinuance, issuing subpoenas, and bringing a class action. These provisions were included in the bill that passed the Senate.

The bill would take effect 180 days after it is enacted.

Summary of Arguments

Pro: The bill establishes that a vehicle protection product warranty is not insurance and exempts the warranties from insurance law if certain requirements are met. The bill eliminates any uncertainty with respect to whether these products are an insurance product or a warranty. So this bill will reduce or eliminate frivolous lawsuits, such that have arisen in California and elsewhere, that may arise in regards to whether a vehicle protection product is an insurance item.

Michigan ranks 5th on the FBI's Crime Report of 2003 among states that have the highest amount of motor vehicle theft behind Arizona. These products are therefore needed in Michigan and that is why the bill would provide a "safe harbor" that stipulates if the provisions are complied with, consumers as well as warrantor dealers will be protected.

Experience in other states suggests that the program will more than pay for itself. While the Texas Department of Licensing and Regulation (TDLR) has budgeted \$9,000.00 in administrative costs to implement the program, TDLR also expects nearly \$16,000.00 in revenue from the program this fiscal year. TDLR has experienced similar figures each year since the program was implemented.

Con: State government should not be taking on any new programs at this time. This would be a small program that would not justify the hiring of a staff person to handle it. As a result, the additional duties would likely be assigned to an existing staff person, who likely already has a

full plate. Early retirements have significantly reduced staff in many agencies and have resulted in increased responsibilities for those remaining. The bill will add more work to already overburdened agencies.

Response: In response to the department's concerns the Senate limited the department's administrative responsibility to registration and maintenance of certain records.

There is no need for this legislation in Michigan. The National Vehicle Protection Association has promoted similar legislation in other states, because there has been litigation contending that these warranties are insurance products. Warranties are not covered by the Insurance Code and there is therefore no need for regulation in Michigan.

Fiscal/Economic Impact

(a) Department of Labor and Economic Growth

Budgetary: A similar program in Texas has resulted in \$9,000 in administrative costs.

Revenue: Estimated revenue to the department from fees is \$7,500.

Comments:

(b) State of Michigan

Budgetary: No impact.

Revenue: No impact.

Comments:

(c) Local Government

Comments:

Other State Departments: No other state departments are affected.

Any Other Pertinent Information: The National Vehicle Protection Association is promoting this legislation in various states.

Administrative Rules Impact: The Department of Labor & Economic Growth is authorized to promulgate rules. The rules may include disclosure requirements for the benefit of warranty holders, record-keeping requirements, and procedures for public complaints.